IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO.664 OF 1989

State of Maharashtra .. Appellant

versus

Budha Trimbak jadhav & Anr. .. Respondents

...

Mr.D.P. Adsule, APP for the State.

Mr.Niteen V. Pradhan for the respondent nos.1 and 2.

CORAM : V.M. KANADE, J

DATED : 16th September 2004.

ORAL JUDGEMENT:-

1. Heard the learned counsel appearing on behalf of the State and the learned counsel for the respondent accused.

2. The State is challenging the order of acquittal passed by the trial Court in Regular Criminal Case no.48 of 1987 passed by Judicial

Magistrate First Class, Daund. The respondents were acquitted as the charge u/s.379 r/wsec.34 of the IPC was not proved beyond reasonable doubt by the prosecution.

3. The prosecution has relied on circumstantial evidence. The confessional statement of the accused was recorded by the police. However, the procedure under section 164 of the Code of Criminal Procedure was not followed. Various amounts were seized by the Investigating Officer from the relatives of the accused on different dated and at different places. There was also delay in lodging the FIR by the complainant. The trial Court found that there was no major discrepancies in the evidence of witnesses pertaining to the seizure of cash and therefore, the trial Court did not rely on the cash seized at the instance of the accused from different persons. The trial Court also observed that though cash was seized from different persons, all these persons were not examined as prosecution witnesses. The trial Court also has drawn adverse inference from the evidence of the complainant and has observed that his conduct is abnormal because the complainant had not informed the other passengers that the accused had stolen the

money.

4. I have perused the evidence of the prosecution witnesses. In my view, the findings given by the trial Court are not unreasonable. The view taken by the prosecution is a possible view. There is no reason to interfere with the said judgement and order of the trial Court.

5. Appeal against acquittal therefore, is dismissed.

V.M. KANADE, J